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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/709,429	05/05/2004	EAKKAPONG POWPONG		3428

7590 11/23/2007
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EXAMINER

SIM, YONG H

ART UNIT	PAPER NUMBER
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2629

MAIL DATE	DELIVERY MODE
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11/23/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/709,429	Applicant(s) POWPONG, EAKKAPONG	
	Examiner Yong Sim	Art Unit 2629	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 11/1/2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

AMR A. AWAD
SUPERVISORY PATENT EXAMINER

Amr A. Awad

Continuation of 11. does NOT place the application in condition for allowance because: With respect to Applicant's remark "1) and 3)," Applicant argues "all that the user needs to do is to have his or her hand resting on the mouse over the massage element."

However, Examiner respectfully asserts that first of all, the limitations of Claim 1 do not explicitly recite as Applicant argues. Instead, Claim 1 recites, "turns on or off said massage mechanism depending on a presence or absence of said user's hand." Further, Muir teaches turning the massage mechanism on or off based on an activation of a switch, and Schena teaches turning on or off a mechanism coupled to a mouse depending on the presence of a person's hand as described in the office action and admitted by Applicant.

Therefore, taking the idea of using a light sensor to control the activation of a switch for a given function of a mechanism as taught by Schena into the massage activation switch which controls a given function of a mechanism such as a massage mechanism of Muir's would obviously yield a mouse with an activation switch which thereby turns on or off the massage mechanism depending on a presence or absence of said user's hand.

Applicant also argues that Schena's device does not contemplate a device for turning on an element selectively.

However, Schena teaches in Col. 29, lines 13 - 20; "the user must continually activate or close safety switch during manipulation of mouse to activate the actuators. If, at any time, the safety switch is deactivated, power is cut to actuators as long as the safety switch is opened." In other words, in order to turn on the switch to activate the mechanism associate with the mouse, the user must selectively place his or her hand on the mouse.

Therefore, the argument is moot.

With respect to Applicant's argument "2", Applicant argues that the sheath provided by Chen, if placed on the Muir's mouse, would not cover the massage feature of Muir.

However, Examiner respectfully disagrees since Chen's sheath in Fig. 3 has an auxiliary holding portion 6 which would cover a portion of the massage mechanism of Muir's mouse.

Further, Examiner respectfully asserts that even if the auxiliary holding portion of Chen does not cover the massage mechanism of Muir's, Muir teaches a cover 24 in fig. 2, which covers the massage mechanism that is not described to be removable. However, taking the idea of having a removable cover of Chen into the device of Muir, it would have been obvious to obtain a mouse with a sheath or cover that is removable and attachable to cover a portion of the mouse such as the massage mechanism.

Therefore, the argument is moot.

With respect to Applicant's argument contesting that neither Korlik or Sugimoto are related to the mouse combination proposed in the office action, Examiner respectfully asserts that the combination is directed to the electronics of the function of the massage mechanism, which not related to the operation of the functions of the mouse. Both Krolike and Sugimoto teach electronics of relating to massage mechanisms.

Therefore, the combination is valid and the argument is moot. .